

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Refugio, Sinton, and Taft, Texas)

MB Docket No. 04-299  
RM-10958

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: May 11, 2005**

**Released: May 13, 2005**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a *Notice of Proposed Rulemaking*<sup>1</sup> issued in response to a petition for rule making filed jointly by Amigo Radio, Ltd. ("Amigo") licensee of Station KOUL(FM), Sinton, Texas, and Pacific Broadcasting of Missouri LLC ("Pacific"), licensee of Station KTKY(FM), Taft, Texas (jointly, "Petitioners"), requesting that we reallocate Channel 279C1 from Sinton to Refugio, Texas, and modify the license of Station KOUL(FM) to reflect the change of community. They also request that we modify the operating condition for Station KTKY(FM), Taft, Texas, to permit the station to commence program test authority on Channel 293C2 when Station KOUL(FM) commences program test authority at Refugio.<sup>2</sup> Petitioners filed Joint Comments reiterating their interest in the proposed reallocation and pledging to file the necessary applications for construction permit and construct the facilities for each station. No other comments were filed.

2. Petitioners filed their proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.<sup>3</sup> In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.<sup>4</sup>

3. Petitioners urge the Commission to grant this proposal so that Pacific can effectuate the change of community of Station KTKY, Channel 293C2, from Refugio to Taft, Texas, which was granted in MM Docket 99-256 by instituting an operating station at Refugio.<sup>5</sup> Petitioners note that this will allow each station to begin operating as soon as the Commission grants its authorization, and Station KTKY will not be required to wait until a new station commences operation in Refugio. We note that the grant

<sup>1</sup> *Refugio, Sinton, and Taft Texas*, 19 FCC Rcd 15298 (2004).

<sup>2</sup> An additional request, to reallocate vacant Channel 263A from Refugio, Texas, to Woodsboro, Texas, as the community's first local aural transmission service, was withdrawn.

<sup>3</sup> See 47 C.F.R. § 1.420(i); see also *Change of Community R&O*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

<sup>4</sup> The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988).

<sup>5</sup> *Refugio and Taft, Texas*, 15 FCC Rcd 8497 (2000).

of a construction permit for Channel 263A at Refugio which was part of Auction No. 37 has been delayed because it requires concurrence of the Mexican government. Such concurrence typically takes six to twelve months.

4. By way of background, MM Docket No. 99-256, Pacific's license for Station KTKY was modified to reflect Taft, in lieu of Refugio, as its community of license. At the same time, a condition was placed on this modification which states:

Operation of Station KTKY on Channel 293C2 in Taft, Texas, including program test operation pursuant to Section 73.1620, will not be commenced until such time as express authorization from the Commission has been granted. Such authorization will not be granted until a construction permit has been issued for Channel 263A or Channel 291A at Refugio and activation of service has been initiated on Channel 263A or Channel 291A at Refugio.

5. In essence, Station KTKY is prohibited from commencing operation in Taft until a new station begins operation on either Channel 263A or 291A at Refugio. After the proceeding in MM Docket No. 99-256 terminated, Station KTKY lost its transmitter site to serve Refugio and has not been able to operate with its full facilities since then. Subsequently, Pacific requested and was denied its request to operate with special temporary authority at Taft using new facilities specified in its now-granted Taft construction permit.<sup>6</sup> The Channel 263A construction permit, once granted, will have a three year term. Petitioners request that the condition on Pacific's authorization for Station KTKY be modified to allow Station KTKY to operate after Station KOUL begins operation in Refugio. No parties opposed this proposal.

6. We will grant the change of community and modify the condition on Station KTKY's authorization. We believe that this will serve the public interest under Priority (4) of the FM allotment priorities because it would provide Refugio with an operating local station without depriving Sinton of its sole local transmission service, while at the same time allowing Station KTKY to commence operation as the first local service at Taft.<sup>7</sup> No site change is necessary, and no gain or loss area is involved.

7. Channel 279C1 is reallocated at Refugio at Petitioners' proposed site, 33.8 kilometers (21 miles) southwest of the community.<sup>8</sup> This proposal is within 320 kilometers (199 miles) of the U.S.-Mexico border requiring concurrence of the Mexican government. Although Mexican concurrence has been requested for the allotment of 279C1 at Refugio, notification has not been received. Therefore, operation with the facilities specified for Refugio herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico. As a result, the Station KTKY operation in Taft would also be subject to termination or suspension.

8. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

9. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective June 27,

<sup>6</sup> See File No. BPH-20000613AAF; *Application for Pacific Broadcasting of LLC for Special Temporary Authority to Operate Station KTKY(FM), Refugio, Texas*, 18 FCC Rcd 2291 (2003) *aff'd on recon.* FCC 04-140 (released June 16, 2004 by the Commission).

<sup>7</sup> Sinton will continue to receive local service from Stations KNCN(FM) and KDAE(AM).

<sup>8</sup> The coordinates for Channel 279C2 at Refugio are 28-02-07 NL and 97-26-11 WL.

2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel</u>
Refugio, Texas	263A, 279C1, 291A
Sinton, Texas	267C1

10. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a) the authorization of Amigo Radio, Ltd., licensee of Station KOUL(FM), Sinton, Texas, IS MODIFIED to specify operation at, subject to the following conditions:

- a) Within 90 days of the effective date of the *Order*, the licensee of Station KOUL(FM) shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

11. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a) the authorization of Pacific Broadcasting of Missouri LLC, licensee of Station KTKY(FM), Taft, Texas, IS MODIFIED, subject to the following condition: Operation of Station KTKY(FM) on Channel 293C2 in Taft, Texas, including program test operation pursuant to Section 73.1620, will not be commenced until such time as express authorization from the Commission has been granted. Such authorization will not be granted until operation has commenced on Station KOUL(FM) at Refugio and is subject to the continued operation by Station KOUL(FM) at Refugio.

12. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, IF THE REQUEST IS GRANTED, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Amigo Radio, Ltd., licensee of Station KOUL(FM), Sinton, Texas, is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the change in community of license for Station KOUL(FM), Channel 279C1, Sinton, Texas, to Refugio, Texas at the time its Form 301 application is submitted.

13. For further information concerning this proceeding, contact Victoria M. McCauley (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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